IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7984 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINBHAI SARADIYABHAI CHAUDHARI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7984 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL, LD.AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 10/09/2003

ORAL JUDGEMENT

By way of filing this Special Civil Application, the petitioner has challenged the order passed by the District Magistrate, Surat, on 7th April, 2003, in exercise of powers conferred upon him by sec.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA Act" for short) declaring the petitioner to be

"bootlegger" within the meaning of PASA Act. In pursuance of the above said order, the petitioner came to be arrested on 7th April, 2003.

2. The grounds of detention placed on record and served upon the detenu petitioner, it transpires that the detaining authority placed reliance on three offences registered against the petitioner under Sec.66(1)(b), 65(a)(e), 81, 116(2) of the Bombay Prohibition Act on 29th December, 2002, 12th February, 2003, and 15th February, 2003. From the above material, the detaining authority came to the conclusion that the petitioner was indulging in activities of selling liquor in bulk. It is alleged that the petitioner was found in possession of foreign liquor. It is averred in the grounds that due to transport and selling of foreign liquor in bulk by the petitioner, public health and public order is adversely affected. It is also averred that there was no other alternative before the detaining authority except to detain the petitioner as bootlegger to prevent the illegal activities of the petitioner to indulge in selling of foreign liquor in bulk. Hence the order impugned in this petition came to be passed.

3. Learned advocate Mr.M.R.Prajapati for the petitioner and learned AGP Ms.Mita Panchal for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner and controverted by the learned AGP, it appears that this petition can be disposed of only on the ground that the detaining authority applied its mind properly as to the aspect whether by filing criminal offences against the petitioner public health was affected or public order was adversely affected. The detaining authority has made general averments as to the hazards of consumption of liquor and consequences. This averments are not based on any cogent material except the fact that three offences are registered against the petitioner. Merely by registration of three offences against the petitioner under Bombay Prohibition Act, it cannot be inferred that the petitioner is indulged in the illegal activities of selling bulk of liquor in such manner as to affect public health as well as public order. Except this there is no material on the record to come to the conclusion that the petitioner was bootlegger and his activities were prejudicial to public health and the public order. The order impugned in this Special Civil Application is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed. The order passed by the District Magistrate, Surat, on 7th April, 2003, in exercise of the powers under sec.3(2) of the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute to the above extent. Direct service is permitted.

(J.R. Vora, J.)

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